

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

- against -

AMERINDO INVESTMENT ADVISORS INC.,  
ALBERTO WILLIAM VILAR, and  
GARY ALAN TANAKA,

Defendants.  
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: 05 Civ. 5231 (LTS)  
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: **MEMORANDUM OF**  
: **LAW IN SUPPORT OF**  
: **MOTION TO FILE**  
: **UNDER SEAL**  
:  
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**MEMORANDUM OF LAW IN SUPPORT OF**  
**REQUEST TO FILE MOTION TO WITHDRAW UNDER SEAL**

Pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure, Loeb & Loeb LLP (“Loeb”) respectfully requests that this Court issue an order permitting Loeb to file its motion to withdraw as counsel for Amerindo Investment Advisors Inc. (“Amerindo”), a defendant in the above-captioned matter, under seal.

**BACKGROUND**

Amerindo retained Loeb as its counsel on or about May 25, 2005. At that time, Amerindo’s two principals had just become the targets of a criminal investigation. Shortly thereafter, the Securities and Exchange Commission (the “SEC”) filed the above-captioned civil suit naming Amerindo, along with its two principals, as a defendant. The SEC then stayed its action pending the outcome of the criminal case.

Loeb represented Amerindo and its former employees throughout the criminal investigation and the resulting trial. Both of Amerindo's employees have now been found guilty of crimes. The SEC has taken steps to resume its case against Amerindo. Loeb plans to file a motion with this Court to withdraw as counsel for Amerindo (the "Motion to Withdraw") with respect to SEC's action. The primary reason for Loeb's request to withdraw will be an inability for Amerindo to pay Loeb for its services or to direct a defense.

The Motion to Withdraw will be based on a declaration by Eugene R. Licker, the partner handling the case for Loeb (the "Declaration").<sup>1</sup> As outlined below, the Declaration will necessarily include confidential information. As such, Loeb requests permission to file the Declaration under seal.

### **ARGUMENT**

The Federal Rules of Civil Procedure grant a district court the power to order that certain court filings be made under seal. See F.R.C.P. 5.2(d) ("The court may order that a filing be made under seal without redaction"). In deciding to issue such an order, the Court has broad discretion and need only find that good cause exists to keep the document in question confidential. See Geller v. Branich Int'l Realty Corp., 212 F.3d 734, 738 (2<sup>nd</sup> Cir. 2000) (noting that, in making the initial decision to order that a document be filed under seal, a district court "enjoys considerable discretion in determining whether good cause exists to overcome the presumption of open access to documents filed in our courts").

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<sup>1</sup> As set forth in the Declaration, there is no real "client" in existence anymore. Accordingly, the motion to withdraw is not supported by a declaration from the client. In addition, the motion to withdraw is accompanied, in the same filing, by a motion to stay. Both motions are supported by the Declaration.

The Declaration contains confidential information regarding the financial and managerial structure of the company. Such information about the current status of Amerindo and its past and present financial conditions should be kept confidential in order to protect the interests of, among others, former employees who have already faced much hardship and many obstacles while trying to move on in their careers. Much of this information is not public and was learned by Loeb as a result of and in furtherance of its representation of Amerindo.

**CONCLUSION**

Based on the above, Loeb respectfully requests that the Court sign the Proposed Order to File Under Seal attached hereto as Exhibit A.

Dated: June 4, 2010

LOEB & LOEB LLP

By: 

Eugene R. Licker

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New York, NY 10154